Docket No. 1232-5377

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): S. YAMAZAKI, et al.

Group Art Unit: 2872

Serial No.:

10/823,020

Examiner:

James Phan

Filed:

April 12, 2004

For:

SCANNING OPTICAL SYSTEM

## PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION

Mail Stop

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

The Applicant hereby requests that the holding of abandonment in the above-identified application be withdrawn on the basis that the Applicant did not receive the Office Action mailed November 4, 2005 (or rather November 1, 2005). In addition, the Applicant requests that the November 4, 2005 Office Action be re-mailed and the time period for response thereto be restarted. No petition fee is believed to be required.

## **DISCUSSION**

On June 22, 2006, the United States Patent and Trademark Office (USPTO) mailed a Notice of Abandonment (PTO-1432) (Exhibit A). The Notice of Abandonment stated that the above-identified application became abandoned on the basis of "Applicant's failure to timely file a proper reply to the Office letter mailed on November 04, 2005." As further discussed below, the Applicant did not receive the November 4, 2005 Office Action.

Serial No.: 10/823,020

Section 711.03(c) of the MPEP states, in part, that:

"The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket records where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement."

The undersigned hereby states that the Office Action mailed November 4, 2005 (or rather November 1, 2005) has, to date, not been received. The undersigned further states that a search of the file jacket and docket records for this application indicates that the November 4, 2005 Office Action has not been received. A copy of the docket record is attached, as Exhibit B, showing where the November 4, 2005 Office Action would have been indicated had it been received and docketed. Furthermore, it is evident from PAIRS that this Office Action was never delivered but rather was returned to the USPTO as undelivered (Exhibit C).

### **CONCLUSION**

On the basis of the above discussion and the attached documentary evidence (Exhibit B) as well as PAIRS (Exhibit C), the Applicant requests that (1) the holding of abandonment in the above-identified application be withdrawn on the basis that Applicants did not receive the Office Action mailed November 4, 2005, (2) the November 4, 2005 Office Action be re-mailed, and (3) the time period for response thereto be restarted.

Serial No.: 10/823,020 Docket No. <u>1232-5377</u>

## **AUTHORIZATIONS**

The Commissioner is hereby authorized to charge any fees which may be required for the consideration of this paper, or credit any overpayment, to Deposit Account No. 13-4500, Order No. 1232-5377. A DUPLICATE COPY OF THIS SHEET IS ATTACHED.

Respectfully submitted, MORGAN & FINNEGAN, L.L.P.

Dated: July 13, 2006 By:

James Hwa

Registration No. <u>42,680</u> (202) 857-7887 Telephone (202) 857-7929 Facsimile

Correspondence Address:

MORGAN & FINNEGAN, L.L.P. 3 World Financial Center New York, NY 10281-2101





## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,020	04/12/2004	Shoichi Yamazaki	1232-5377	3545
	7590 06/22/2006		EXAM	INER
	FINNEGAN, L.L.P. VANCIAL CENTER		PHAN, J	AMES
	NY 10281-2101		ART UNIT	PAPER NUMBER
			2872	
			DATE MAILED: 06/22/2006	<b>,</b>

Please find below and/or attached an Office communication concerning this application or proceeding.

Filed By: Date:

	Application No.	Applicant(s)	
	10/823,020	YAMAZAKI ET	AL.
Notice of Abandonment	Examiner	Art Unit	
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The MAILING DATE of this communication app	<u> </u>		ldress
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This application is abandoned in view of:			
Applicant's failure to timely file a proper reply to the Offic     (a) ☐ A reply was received on (with a Certificate of learning period for reply (including a total extension of time of	Mailing or Transmission dated month(s)) which expired on _	), which is after the	
(b) A proposed reply was received on, but it does			
(A proper reply under 37 CFR 1.113 to a final rejectic application in condition for allowance; (2) a timely file Continued Examination (RCE) in compliance with 37	d Notice of Appeal (with appeal fee);		
(c) A reply was received on but it does not constitutional rejection. See 37 CFR 1.85(a) and 1.111. (See		empt at a proper rep	oly, to the non-
(d) 🖾 No reply has been received.			
2. Applicant's failure to timely pay the required issue fee ar from the mailing date of the Notice of Allowance (PTOL-	85).		
(a) The issue fee and publication fee, if applicable, wa), which is after the expiration of the statutory particles (PTOL-85).	is received on (with a Certific period for payment of the issue fee (a	ate of Mailing or T nd publication fee)	ransmission dated set in the Notice of
(b) ☐ The submitted fee of \$ is insufficient. A balance	ce of \$ is due.		
The issue fee required by 37 CFR 1.18 is \$	The publication fee, if required by 37	CFR 1.18(d), is \$_	•
(c) ☐ The issue fee and publication fee, if applicable, has r	not been received.		
3. Applicant's failure to timely file corrected drawings as rec Allowability (PTO-37).	uired by, and within the three-month	period set in, the N	otice of
<ul> <li>(a) ☐ Proposed corrected drawings were received on</li> <li>after the expiration of the period for reply.</li> </ul>	_ (with a Certificate of Mailing or Trai	nsmission dated	), which is
(b) ☐ No corrected drawings have been received.			
4. The letter of express abandonment which is signed by the applicants.	ne attorney or agent of record, the ass	signee of the entire	interest, or all of
5. The letter of express abandonment which is signed by a 1.34(a)) upon the filing of a continuing application.	n attorney or agent (acting in a repre	sentative capacity ι	ınder 37 CFR
6. The decision by the Board of Patent Appeals and Interfer of the decision has expired and there are no allowed cla		se the period for se	eking court review
7. The reason(s) below:			
		James Phan Primary Examin Art Unit: 2872	er
Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withd minimize any negative effects on patent term.	raw the holding of abandonment under 37	CFR 1.181, should b	e promptly filed to
U.S. Patent and Trademark Office	of Abandonment	Part of Part	aper No. 20060618

# EXHIBIT B

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